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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 378

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

CHICAGO PORTRAIT COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT.

STATEMENT OF FACTS.

This is a proceeding originally instituted before the United States Board of Tax Appeals to review an additional tax of $1,919.59 proposed by the Commissioner of Internal Revenue against the Chicago Portrait Company for the calendar year 1923. The decision of the Board (R. 16-22), reported in 16 B. T. A. 1129, and the decision of the Circuit Court of Appeals for the Seventh Circuit (R. 38-42), reported in 50 Fed. (2d) 683, were in favor of the Chicago Portrait Company.

The facts, which were stipulated below, may be summarized as follows (R. 14-16):

During the calendar year 1923, the taxpayer, an Illinois corporation was the owner of 51 per cent of the voting stock of and received dividends from the International Art Company, of Sydney, Australia, a foreign corporation. During the same year, the Australian corporation paid income taxes to the Commonwealth of Australia, to the Dominion of New Zealand, and to the State of New South Wales. The Commissioner included the dividends received from the Australian corporation in the gross income of the taxpayer for the year 1923, credited the taxes paid to the Commonwealth of Australia and the Dominion of New Zealand, but refused to allow as a credit any part of the income taxes paid by the Australian corporation to the State of New South Wales.

THE ISSUE.

THE SOLE QUESTION IS WHETHER NEW SOUTH WALES IS INCLUDED IN THE PHRASE "ANY FOREIGN COUNTRY" WITHIN SECTION 238 OF THE REVENUE ACT OF 1921.

Statute Involved.

"SEC. 238 (a) That in the case of a domestic corporation the tax imposed by this title, plus the war-profits and excess-profits taxes, if any, shall be credited with the amount of any income, war-profits and excess-profits taxes paid during the same taxable year to any foreign country, or to any possession of the United States; *Provided*, That the amount of credit taken under this subdivision shall in no case exceed the same proportion of the taxes, against which such credit it taken, which the taxpayer's net income (computed without deduction for any income, war-profits, and excess-profits taxes

imposed by any foreign country or possession of the United States) from sources without the United States bears to its entire net income (computed without such deduction) for the same taxable year. In the case of domestic insurance companies subject to the tax imposed by section 243 or 246, the term 'net income,' as used in this subdivision means net income as defined in Sections 245 and 246, respectively.

* * * * * *

(e) For the purposes of this section a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends (not deductible under section 234) in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid by such foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits: *Provided,* that the credit allowed to any domestic corporation under this subdivision shall in no case exceed the same proportion of the taxes against which it is credited, which the amount of such dividends bears to the amount of the entire net income of the domestic corporation in which such dividends are included. The term 'accumulated profits' when used in this subdivision in reference to a foreign corporation, means the amount of its gains, profits, or income in excess of the income, war-profits, and excess-profits taxes imposed upon or with respect to such profits or income; and the Commissioner with the approval of the Secretary shall have full power to determine from the accumulated profits of what year or years such dividends were paid; treating dividends paid in the first sixty days of any year as having been paid from the accumulated profits of the preceding year or years (unless to his satisfaction shown otherwise), and in other respects treating dividends as having been paid from the most recently accumulated gains, profits, or earnings. In the case of a foreign corporation, the income, war profits, and excess-profits

taxes of which are determined on the basis of an accounting period of less than one year, the word 'year' as used in this subdivision shall be construed to mean such accounting period."

SUMMARY OF ARGUMENT.

I. Section 238 of the Revenue Act of 1921 means that all income and profits taxes paid to taxing authorities foreign to the United States may be taken as credits, subject only to the limitations provided in that section.

1. The statute must be interpreted in the light of the purpose sought to be accomplished and the intention of Congress.

Smythe v. *Fiske,* 23 Wall. 374, 380.
Hamilton v. *Rathbone,* 175 U. S. 414, 419.
Hawaii v. *Mankichi,* 190 U. S. 187, 212.
Stewart v. *Kahn,* 11 Wall. 493, 504.
Barrett v. *VanPelt,* 268 U. S. 85, 90.

2. The Congressional purpose was (a) to relieve double taxation, and (b) to increase the revenue by discouraging American business concerns from separating their foreign activities into foreign corporations whose incomes could not be taxed until actually brought into this country.

Hearings before Ways and Means Committee under Act of 1918, p. 649.
Report of Ways and Means Committee on Act of 1918, p. 11.
Report of Ways and Means Committee on Act of 1921, p. 8.
Conference Committee Report on Act of 1921, p. 38.

3. To make the right to the credit contingent on the international rank of the foreign tax collecting authority, as the Government urges, defeats the purpose of the Act.

Conference Committee Report on Act of 1918, p. 53.

Report of Ways and Means Committee on Act of 1918, p. 11.

II. New South Wales is a foreign country within the meaning of Section 238 of the Revenue Act of 1921.

1. The word "country" in the phrase "any foreign country" means any foreign tax-levying authority.

Dicey's Conflict of Laws, 4th Ed., pp. 59, 60.

Campbell v. *Barney,* 4 Fed. Cas. 1157.

Mensevich v. *Tod,* 264 U. S. 134.

Seif v. *Nagle,* 14 F. (2d) 416.

United States v. *Smith,* 2 Fed. (2d) 90.

In re Farez, 8 Fed. Cas. 1011.

Pagano v. *Cerri,* 93 Ohio St. 345.

In re Ghio's Estate, 157 Cal. 552.

Mansell's Adm'x v. *Israel,* 6 Ky. 510.

Hendrie Mfg. Co. v. *Pendrick,* 21 Hawaii 258.

2. The Government's interpretation of the term "foreign country" is based on a misapplication of some of the older tariff decisions, but the fact is that there is no uniform definition of the term even in the particular field of tariff legislation.

Pearcy v. *Stranahan,* 205 U. S. 257, 269.

Stairs v. *Peaslee,* 18 Haw. 521.

Faber v. *United States,* 221 U. S. 649.

United States v. *The Ship Recorder,* 1 Blatchford 218.

3. Status of New South Wales.

Vol. 10, The Laws of England (1909), by Earl of Halsbury, pp. 508, 519.

Attorney General for Commonwealth of Australia v. *The Colonial Refining Co.* (1914) A. C. 237.

Bryce, Modern Democracies (1927), Vol. II, p. 177.

Allen, The Evolution of Governments and Laws (rev. ed., 1922), p. 126.

4. The tax in question was levied pursuant to power delegated to New South Wales by the United Kingdom of Great Britain and Ireland.

Meyers v. *United States,* 140 Fed. 648.

Vol. 10, The Laws of England (1909), by the Earl of Halsbury, p. 542.

Keith, Responsible Government in The Dominions, (2d Edition, 1928), Vol. II, p. 620.

1 Oppenheim International Law (3d Edition, 1920) p. 160.

5. The Regulations of the Treasury Department have adopted a construction of the word "country" and of the term "foreign sovereign state or self-governing colony" which would include New South Wales.

Article 382, Regulations 62.

Article 385, Regulations 62.

Article 307, Regulations 45.

Article 89, Regulations 69.

S. M. 1614, III—1 C. B. 227.

S. M. 1187.

O. D. 1050, 5 C. B. 194.

Attorney General for the Commonwealth of Australia v. *The Colonial Sugar Refining Co.* (1914) A. C. 237.

III. There was no consistent construction of the term "foreign country" by the Bureau of Internal Revenue.

Article 8, Regulations 33.

Article 8, Regulations 33 (Rev.).

Article 382, Regulations 45 (First Edition).

Report of the Ways and Means Committee on Act of 1918, p. 11.

Report of Conference Committee on Act of 1918, p. 60.

Article 382, Regulations 45 (1920 Ed.).

Report of Secretary of Treasury (1919), p. 1102.

Iselin v. *United States,* 270 U. S. 245, 251.

The Dollar Savings Bank v. *United States,* 86 U. S. 227, 237.

Missouri Pac. R. Co. v. *Hellmich,* 12 Fed. (2d) 978.

United States v. *Rodenbaugh,* 21 Fed. (2d) 781, 785.

ARGUMENT.

I.

SECTION 238 OF THE REVENUE ACT OF 1921 MEANS THAT ALL INCOME AND PROFITS TAXES PAID TO TAXING AUTHORITIES FOREIGN TO THE UNITED STATES MAY BE TAKEN AS CREDITS, SUBJECT ONLY TO THE LIMITATIONS PROVIDED IN THAT SECTION.

Section 238 of the Revenue Act of 1921 grants to certain corporation-taxpayers what is popularly called the "credit for foreign taxes." A similar credit is granted to individuals by Section 222 of the same Act. By this credit the taxpayer may offset against the tax that would otherwise be due the United States the amount of income, war profits, and excess profits taxes paid during the year "to any foreign country." Section 238 (e) allows certain domestic corporations having a foreign subsidiary to take a similar credit for such taxes paid by the foreign subsidiary "to any foreign country." The Commissioner of Internal Revenue, the petitioner before this Court, denied the credit taken by the respondent for taxes paid to New South Wales by its foreign subsidiary upon the ground that New South Wales does not come within the phrase "any foreign country."

The Commissioner of Internal Revenue in his brief before this Court contends that New South Wales is not an international sovereignty or self-governing colony and that for this reason it does not come within the term "any foreign country."

The respondent contends that the purpose of Congress in enacting Section 238, the long established ad-

ministrative interpretation of the term "foreign country," and the legal meaning of the term, show that international statehood or sovereignty is not the test.

1. *The Statute Must Be Interpreted in the Light of the Purpose Sought to Be Accomplished and the Intention of Congress.*

The rule is well settled that statutes are to be construed in the light of the purpose sought to be accomplished and in such a manner as to give effect to the intent of Congress. Among the numerous cases supporting this rule, see *Hamilton* v. *Rathbone,* 175 U. S. 414, 419; *Hawaii* v. *Mankichi,* 190 U. S. 197, 212; *Stewart* v. *Kahn,* 11 Wall. 493, 504; *Barrett* v. *Van Pelt,* 268 U. S. 85, 90; *Smythe* v. *Fiske,* 23 Wall. 374, 380.

2. *The Congressional Purpose was (a) to Relieve Double Taxation, and, (b) to Increase the Revenue by Discouraging American Business Concerns from Separating Their Foreign Activities Into Foreign Corporations Whose Incomes Could Not Be Taxed Until Actually Brought Into This Country.*

Since the jurisdiction of the United States to levy income and/or profits taxes on its citizens permits the federal tax to be based on foreign as well as domestic income, it is obvious that there is a double tax burden where the United States taxes such foreign income and the foreign country in which the income is earned likewise levies an income or profits tax. The foreign income in such cases is subject both to the foreign tax and to our federal tax. The federal revenue acts before the war granted a measure of relief by permitting the foreign income tax to be *deducted* from *gross income* in determining the net income subject to the fed-

eral income tax. With the low tax rates then obtaining under the federal revenue acts and in foreign countries, this method of relief was adequate.

The deductions of a corporation under the Revenue Act of 1913 (Act of October 3, 1913, 38 Stat. 114, 166 173), included "all sums paid by it within the year for taxes imposed * * * by the Government of any foreign country," (Paragraph G (b) (fourth)), and under the Revenue Act of 1916 (Act of September 8, 1916, 39 Stat. 756, 767, 769) "taxes paid within the year imposed by authority of * * * any foreign country. * * *." (Sec. 12 (a)). It was the Treasury practice under these prewar acts to permit the deduction of all foreign taxes, including, for example, a tax paid to New South Wales. Reg. 33, Art. 8:

> "*Third.* Taxes: State, or any political subdivision thereof, Federal or foreign (except income and excess profits taxes paid to the United States), and not including taxes assessed against local benefits."

Subsequent to the Revenue Act of 1917, new Regulations were adopted, No. 33 Revised. This same section was carried forward into the Revised Regulations.

The World War placed a tremendous fiscal burden on most of the governments of the world, which was reflected immediately by the imposition of income and profits taxes at extraordinarily high rates.

One result of these extraordinarily high tax rates in this country and throughout the world was to increase the double tax burden on foreign income of American corporations to a point where it became unendurable and amounted as a practical matter to confiscation of the foreign income. The natural defense against such confiscation was for Americans to segregate their foreign businesses in the form of separate foreign corpo-

rations, with the result that though the income of such foreign corporations was taxable by the foreign country, it would not be subject to tax by the United States. Thus the unbearable burden of double taxation at high rates might be alleviated by the action of the taxpayers themselves.

The Government, however, was opposed to separate foreign incorporation for a number of reasons, an important reason being that the inevitable result was a substantial loss of revenue to the United States. The following testimony produced in the hearings before the Ways and Means Committee under the Revenue Act of 1918 (at p. 649) shows the considerations which were urged upon Congress by American industry having interests abroad:

> "Now, the proposal is that income derived by American corporations from sources abroad—from operations entirely abroad—or from investments entirely abroad, be either exempted altogether from income and excess-profits taxes or at least that some preferential rate be given. Now, it may appear that I am asking you gentlemen who are engaged in the task of increasing revenues, to diminish revenues, but an examination of the subject has convinced me and I think, if you will follow me carefuly, it will convince you gentlemen, that if we continue to impose a heavy income tax, and especially a heavy excess-profits tax on American corporations operating abroad, our sources of revenue, not only the national revenue, but the State revenue, are going to be diminished, because the first effect will be that these corporations will be compelled to give up their American charters and will be compelled to seek incorporation in foreign jurisdictions, naturally in the place where they are doing business, and in that way this Government is going to lose that revenue from those corporations.
>
> The States are going to lose the revenue from them that they now derive from the organization and the license fees and taxes, and we are going

to lose a great deal of control over the corporations. That is practical, hard, business from the standpoint of taxation.

From the standpoint of American foreign trade the consequences are far greater. It would be a tremendous loss of prestige to the United States, to our foreign trade, if these companies had to give up their American charters. * * *"

Congress proceeded to meet the situation by permitting the foreign tax to be credited against the American tax, as heretofore explained. In the report of the Ways and Means Committee on the 1918 Act (Report No. 767 to accompany H. R. 12863, 65th Congress, Second Session, p. 11), it was stated:

"Under existing law a citizen of the United States can only deduct income, war or excess profits taxes paid to a foreign country from gross income in computing net income. *With the corresponding high rates imposed by certain foreign countries the taxes levied in such countries in addition to the taxes levied in the United States upon citizens of the United States place a very severe burden upon such citizens.* The bill provides that a credit against the income tax imposed in the United States be allowed a citizen of the United States subject to income and war or excess profits taxes *in* a foreign country of an amount equal to the tax paid in such country upon income that is received from sources within such country." (Italics supplied.)

The same problem was before Congress in the Revenue Act of 1921, at which time it was again urged that the protection of our foreign trade and keeping our foreign business under American charters necessitated the complete exemption of foreign traders from the extraordinarily high tax rates in the federal revenue act. The House of Representatives went so far as to allow what in substance amounted to exemptions to American citizens and corporations on income from foreign trade. The purpose was explained in the report of the Ways

and Means Committee on the 1921 Act (at p. 8) as follows:

> "Under existing law an American citizen or domestic corporation is taxed upon his or its entire income even though all of it is derived from business transacted without the United States. This results in double taxation, places American business concerns at a serious disadvantage in the struggle for foreign trade, and encourages American corporations doing business in foreign countries to surrender their American charters and incorporate under the laws of foreign countries. In order to remedy this situation foreign traders and foreign trade corporations, as above defined, under this bill (sec. 223) will be taxed substantially as nonresidents—*i. e.*, only on income received from sources within the United States."

The House provision did not become law, but the credit for foreign taxes against the American tax was continued subject to certain statutory limitations.

It is apparent, therefore, that the provisions for the crediting of foreign taxes were not written into the law as a gratuitous exemption to certain classes of taxpayers, but rather for the very practical reason of preventing the drying up of foreign income as a source of federal taxes and for the purpose of stimulating our foreign trade. The same purpose is evident in sub-section (e) of section 238, which encourages concerns already separately incorporated in foreign countries to distribute their earnings to the American parent corporations in the United States so as to subject the dividends to our federal tax.

The handling of the problem by means of a credit for foreign taxes had the advantage of permitting the highly progressive corporate and individual rates to be applied to the entire net income. The report of the Con-

ference Committee on the Act of 1921 (at p. 38) contains the following:

> "Amendment No. 436: The House bill provided for the exclusion from income of all dividends received from a corporation. Senate amendments agreed to by the conferees having provided for the inclusion in gross income of certain dividends received from a foreign corporation, Senate amendment No. 436 provides, under proper safeguards, for the credit by a domestic corporation of taxes paid by its subsidiary foreign corporation with respect to the income or profits of the foreign corporation paid as taxable dividends to the domestic corporation; and the House recedes."

The credit system had the further advantage of granting no direct credit against the tax on income derived from foreign countries which imposed *no taxes on income or profits,* whereas the exemption plan would have deprived the United States of all revenue, even in countries where there was no income or profits tax. Finally, the credit system as distinguished from that of exempting foreign income had the very great practical advantage of obviating the necessity of dividing items of income, expense and invested capital between domestic business and foreign business, which would have proved, of course, to be an exceedingly difficult allocatoin.

In short, to relieve an unbearable burden of double taxation and at the same time to retain and protect our own foreign trade and to make the income therefrom subject to American taxation, Congress adopted, through the credit system, a device which goes some way toward abating the American tax on income from sources within foreign countries when such countries actually subjected such income to income and/or profits taxes. The system of crediting foreign taxes inaugurated in the 1918 Act was re-enacted, without substantial change, in the 1921 Act, the Act involved in the present case.

The interests of the United States were fully safeguarded by the limitations in the statute (sec. 238 (a)) which restrict the amount of the credit to that percentage of the Federal tax which the foreign income bears to the combined foreign and domestic income. If the American corporation conducts its foreign business through a subsidiary, as in the present case, the even more strict limitations of subdivision (e) apply. Obviously, therefore, the credit does not exempt any American income from Federal taxation nor does not diminish the effective tax rate on the American income. It may be noted in passing that this disposes of the Government's contention that the Act should be construed against the taxpayer because it is asking for an exemption from the common burden of taxes. The fact is that the taxpayer is placed on the basis of the common tax burden borne by all industry throughout the United States. In some instances, of course, especially where the foreign business is done through a subsidiary, the statutory limitations operate in such a manner that the credit will not even wholly eliminate the double taxation of *foreign* income. In general, the credit tends to alleviate the burden of double taxation on foreign income, but the relief goes no further.

It is obvious that the Congressional intent and purpose outlined above can be given effect only by treating as foreign countries any foreign authority which actually levies and collects income and/or profits taxes, including, of course, such taxing authorities as the government of New South Wales.

3. *To Make the Right to the Credit Contingent on the International Rank of the Foreign Tax Collecting Authority, as the Government Urges, Defeats the Purpose of the Act.*

The extent of the hardship or confiscation to the taxpayer and loss of revenue to the Government does not depend upon the political organization of the foreign taxing authority. Double taxation arises wherever a foreign taxing authority, regardless of its international status or lack of status, levies and collects an income, war profits or excess profits tax on income earned by American corporations, or their subsidiaries, within its boundaries. The circumstance that the foreign taxing authority may be great or small, strongly centralized or loosely organized, whether it falls within one of the numerous and varying types of "sovereign" or semi-sovereign entities, or is itself technically a part of such an entity, has no significance. If the foreign tax-levying authority (whatever its precise international status), lays and collects income and profits taxes, by virtue of its own power or of power delegated to it, such a taxing authority falls within the meaning and intent of "foreign country" as that phrase is used in section 238. If income and profits taxes are imposed and collected by a taxing authority foreign to the United States, the obvious purpose of Congress requires that the taxes so levied and collected be credited against the Federal tax, subject to the statutory limitation in the section itself. The subtle distinctions attempted to be drawn in the Government's brief have absolutely no relation to the purpose which Congress sought to effectuate in the legislation involved in this case.

In the Report of the Ways and Means Committee on the Revenue Act of 1918, quoted above at p. 12, no

distinction is made between taxes "paid *to* a foreign country," taxes "levied *in* such countries" and taxes "paid *in* such country." Likewise, in the Conference Report (at p. 53) submitted to the House on February 6, 1919, we find words indicating an understanding that taxes paid or accrued "*in* any possession or foreign country" meant the same thing as taxes paid or accrued "*to* any possession or foreign country." It is there stated:

> "Amendment No. 118: The House bill provided that a citizen of the United States might credit against his income tax the amount of any income, war-profits, and excess-profits taxes paid *to any foreign country,* Porto Rico, or the Philippine Islands, upon income derived from sources therein, and allowed a similar credit to an alien resident if his country made reciprocal provisions. The Senate amendment entirely rewrites the section and broadens it to include a credit for taxes paid to any possession of the United States, which is also to be given to an alien resident of the United States. The House recedes with an amendment providing that if any deduction is allowed for taxes accrued *in any possession or foreign country,* the Commissioner may require the taxpayer to give a surety bond providing for the payment of any tax found to be due the Government in case too great a deduction shall be allowed for accrued taxes *in our possession or any foreign country.*"

It is apparent that Congress, in using the phrase, "paid to any foreign country," did not intend to partially defeat the purpose of the enactment of Section 238. Congress clearly intended the section to apply to all income and profits taxes paid to taxing authorities foreign to the United States.

II.

NEW SOUTH WALES IS A FOREIGN COUNTRY WITHIN THE MEANING OF SECTION 238 OF THE REVENUE ACT OF 1921.

1. *The Word "Country."*

In international law the word "country" may be used in more than one sense. In connection with treaties and negotiations between nations, the term "foreign country" may well be used in the narrow sense of a particular sovereign entity which has power to contract with other foreign nations. Such a "foreign country" may be synonymous with the "High Contracting Parties" spoken of in our treaties. No such restricted meaning, however, can be read into section 238 of the 1921 Act in the light of the legislative purpose of Congress in enacting that provision.

We think that the all inclusive word "country" is an apt word to express the Congressional intent to permit the crediting of taxes paid to New South Wales or to any other taxing authority foreign to the United States. That the word "country" is susceptible of the broader meaning here contended for amply appears from the following statement in Dicey's Conflict of Laws (1927), 4th Edition, pp. 59, 60:

> "The word 'country' has among its numerous significations the two following meanings which require to be carefully distinguished from one another.
>
> (i) A country, in what may be called the *political sense of the word*, means 'the whole of the district or territory, subject to one sovereign power,' such as France, Italy, the United States, or the British Empire.
>
> * * * * *
>
> (ii) A country, in what may be called the *legal sense of the word*, means 'a district or territory, which (whether it constitutes the whole or a part only of the territory subject to one sovereign) is the

whole of a territory subject to one system of law'; such as, for example, England, Scotland, or Northern Ireland, or as each of the States which collectively make up the United States.

* * * * *

Thus France, Italy and Belgium, each constitute one separate country in both senses of the term. France (including, of course, in that term French dependencies) is one country in the political sense of the word, and is also one country or law district in the legal sense of the term. On the other hand, the British Empire, while constituting one country, realm, or State in the political sense of the term country, consists of a large number of countries in the legal sense of the word, since England, Scotland, the Irish Free State, Northern Ireland, the Isle of Man, the different Dominions, *provinces, States, colonies,* etc., are in this sense *separate countries* or law districts."

Congress was using the word "country" in its legal sense as defined by Dicey.

Dictionary meanings, though not conclusive, are helpful. Webster's New International Dictionary defines the word "country" as follows:

"Country.—* * *

3. The territory of a nation; *a state, whether independent or not,* that is distinct as to name and the character, language, institutions, or historical memories of its people, as England or Poland." (Italics supplied).

Another pertinent illustration is in the deportation laws. In *Mensevich* v. *Tod,* 264 U. S. 134, it appeared that Mensevich, who was about to be deported to Poland, questioned the deportation as illegal because prior to his emigration to the United States he had been a resident of Tychny in the Province of Grodno, then a part of Russia. The Deportation Act provided for deportation "to the country from whence he came." (U. S. C. Title 8, sec. 156). The deportation warrant or-

dered him to be deported to Poland. At the time the warrant for deportation issued and at the time of the judgment of the District Court, Grodno was occupied and administered by Poland. Obviously, if the term "country" referred to a sovereign political power, Mensevich came from Russia, and should have been deported to Russia. If, on the contrary, the term "country" means the locality of Grodno or Tychny, then the deportation to Poland, of which these localities had become part, was proper. The Supreme Court held that the deportation to Poland was proper and said:

> "The term country is used in § 20 to designate, in general terms, the state which, at the time of deportation, *includes the place from which the alien came.* Whether territory occupied and administered by a country, but not officially recognized as being a part of it, is to be deemed a part for the purposes of this section, we have no occasion to consider. For, since the entry of the judgment below, the Treaty of Riga has so defined the eastern boundary of Poland as to include Grodno; and the United States has officially recognized this boundary line. *Grodno is now confessedly a part of Poland.*" (Italics supplied.)

To the same effect, see *Seif* v. *Nagle*, 14 F. (2d) 416 (C. C. A. 9th Cir.); *United States* v. *Smith*, 2 F. (2d) 90 (D. C. W. D. N. Y.). See also *In re Farez*, 8 Fed. Cas. 1011 (Cir. Ct. S. D. N. Y.).

The word "country" has frequently been applied to the separate States of the United States as distinguished from the federal government. For instance, in *Pagano* v. *Cerri*, 93 Ohio St. 345; 112 N. E. 1037, the Court was construing the familiar type of treaty whereby the two contracting powers agreed that if a citizen of either power should die without will or testament in the territories of the other, a representative might have the right to intervene in the administration and liquidation of the

estate conformably with the law of the country for the benefit of creditors and legal heirs. This particular case involved a treaty with Sweden. The Court said:

> "It is clearly to be seen that in the making of the Swedish Treaty full recognition was given to this fact, and the government at Washington limited the rights and prerogatives granted consuls of Sweden and of all other countries, and bound itself to vouch for only such rights and privileges as the law of each country would permit; *the meaning of the word 'country' being so far as it is applied to the United States,* 'the States of such country.'" (Italics supplied).

See also *In re Ghio's Estate,* 157 Cal. 552; 18 Pac. 516.

In *Mansell's Administrator* v. *Israel,* 6 Ky. 510, 514, the court was interpretaing a statute of limitations which provided that the bar should not run when the defendant was without the *country* and held that this meant without the State. The court said:

> "We cannot suppose as was contended in the argument that the expression 'the country' should be construed to mean the United States and not this State. *This State may certainly with propriety be called a country,* and when the legislature used the expression 'the country,' it is natural to suppose that they meant the country for which they were legislating."

See also *Hendrie Mfg. Co.* v. *Pendrick,* 21 Hawaii 258.

Campbell v. *Barney,* 4 Fed. Cas. 1157 (Cir. Ct. S. D. N. Y.), involved a tariff act which imposed an additional duty on products "of a country beyond the Cape of Good Hope." The goods in question came from Calcutta, part of the British East Indies, and the court held that this was a country beyond the Cape of Good Hope. The Court said:

> "The word 'country' in this section is obviously used in a local and geographical sense without re-

gard to the subdivisions of the territory under different sovereigns or governments."

Thus it is clear that the ordinary meaning of "country" as understood by the courts is in nowise confined to an entity having power to make international treaties. On the contrary, it is frequently used to designate political subdivisions.

The Government contends that international sovereignty is the test. Sovereignty has been given different meanings, depending upon the angle from which one is looking. But take any definition of sovereignty and attempt to ascertain the extent of the sovereignty of all the governments in the world and the act becomes impossible of administration. Or to say the least, there are "no certain and fixed limits" to guide either the Government or the taxpayer such as the Court found necessary in *Stairs* v. *Peaslee, infra,* p. 24.

In support of its theory of international sovereignty, the Government further points out that no credit is allowed for taxes paid to states of the United States. (Petitioner's Brief, p. 15). That may have some significance in determining the meaning of the word "foreign" but not in defining the word "country." The petitioner overlooks the congressional purpose. It makes no difference to the taxing power of the Federal Government whether a corporation is incorporated in Illinois, Delaware or New Jersey. In either event, the income is subject to taxation by the United States. If, however, the incorporation is changed from a State of the United States to the Canadian Province of Ontario, the United States would lose jurisdiction to tax the income.

It is difficult to follow petitioner's process of reasoning on page 14, that the international conference on double taxation held several years after the enactment of

Section 238 of the Revenue Act of 1918 and of the Revenue Act of 1921, has any bearing upon the interpretation of that section. Congress, in 1918 and 1919, adopted Section 238 to relieve American citizens and corporations from burdensome double taxation and in order to encourage the bringing of foreign income into the United States. This enactment was entirely for the benefit of American citizens and corporations and was not based upon any reciprocity or possible treaty arrangement. In the conferences on international double taxation the representatives of the United States were attempting to protect American citizens and corporations from burdensome double taxation by reason of excessive foreign taxes.

Counsel for petitioner seems to argue that because these conferences took place with certain countries rather than all foreign taxing countries, our statute should be construed as limited to a restricted class of countries such as were represented at the conferences, with the result that the burdensome double taxation would be continued to that extent instead of being removed as Congress obviously intended. It would be expected that only so-called "international states" would be represented at an international conference. Such representatives, however, would be the persons to deal with all taxes affecting its nationals, regardless of the internal jurisdiction of taxing authorities.

The "foreign country" which may negotiate with other countries is entirely different from the "foreign country" which imposes and collects income taxes.

The Congressional enactment was framed and designed to meet and only meet the exigency of the situation, which was the allowance of credit of all taxes paid to any taxing authority foreign to the United States.

The narrow meaning contended for by the Government produces the startling result that a credit may be allowed on account of income taxes paid to such sovereign States as Abyssinia, Afghanistan, Albania, Azerbaijan, Straits Settlement, Salvador, San Marino, Monaco and the Free City of Hamburg, but that no credit may be allowed for taxes paid to British Columbia, Ontario, New South Wales, Victoria or the Orange Free State. We do not think Congress had any such distinctions in mind.

2. *The Government's Interpretation of the Term "Foreign Country" Is Based on a Misapplication of Some of the Older Tariff Decisions, but the Fact Is That There Is No Uniform Definition of the Term Even in the Particular Field of Tariff Legislation.*

The Government relies principally on the decision in the case of *Stairs* v. *Peaslee*, 18 How. 521.

The Court's decision in that case is the only one which would have prevented a fraud on the revenues. The tariff law under consideration in that case provided for an appraisal to ascertain the value of the imported goods at the principal markets of the country from which imported. The article imported was cutch, which originated in Calcutta, India. It was shipped to Halifax, Nova Scotia, where there was no market for cutch, and reshipped to the United States. The importers contended that the appraisal should be based on values in Halifax instead of Calcutta or Liverpool, which were the principal markets of Great Britain. It was an obvious attempt to evade the tariff laws. The Court pointed out that if the word "country" were used in any other sense, the law furnished no "certain and fixed limits to guide the appraisers" in determining what were the principal markets. The issue in that case was whether or not

Nova Scotia was a country foreign to Great Britain. In other words, to use Halifax, Nova Scotia, as the place of valuation, it was necessary to segregate Nova Scotia as a country foreign to the rest of Great Britain. The question at bar is whether or not the particular territory with which we are dealing, New South Wales, is foreign to the United States.

In the *Stairs* case, the court was called upon to choose between definitions of the phrase, "foreign country," one of which would effectuate the purpose of Congress and prevent evasion, and the other of which would defeat the purpose of Congress by permitting a palpable evasion.

It will be noted tht the *Stairs* case defines a "foreign country," for the particular purpose of the statute under consideration, as nothing less than all the territory of the British Empire. The Government must inevitably be embarrassed if that old tariff decision were to be held applicable to this entirely different problem presented by our modern income tax acts. It has been the consistent practice of the Bureau to permit the crediting of taxes paid to the Union of South Africa (S. M. 1614, Government's Brief, p. 31), Canada, Australia, and other units of the British Empire (Regulations 62, Articles 382 and 385), such as Newfoundland, India, Straits Settlements. The unfortunate result of attempting to fit the Stairs case into the statutory system of crediting foreign taxes would be to invalidate the Commissioner's own rulings and regulations just referred to and to prohibit the crediting of taxes to units of the British Empire. The result would be to confine the credit solely to taxes paid to Great Britain, an impractical consequence for which we are certain the Commissioner does not desire to contend.

Faber v. United States, 221 U. S. 649, is similar to

the *Stairs* case and seems to require no additional comment.

The case of *United States* v. *The Ship Recorder*, 1 Blatchford 218, cited by petitioner, illustrates more clearly the distinction which we have made. The statute in question provided that goods imported into the United States could only be imported into the United States in American vessels or in ships belonging to citizens of the country from which the goods were imported. The goods in question were imported from British East India in a British vessel. The ship was libeled on the ground that it was not a British East Indian ship. The Court held that British East India was a part of the British Empire and that the word "country" in the particular case referred to the entire British Empire. To have held otherwise, it would have been necessary to hold that British East India was a country foreign to Great Britain, which was obviously not the fact. The Court pointed out that the word "country" may mean city, town, state, geographical locality, a nation, and many other things, dependent upon the context and purpose of the legislation.

The term very properly, we think, even in tariff legislation, receives one interpretation or another according to the context in which it is used, the purpose of the legislation, and the question before the court in each case. For example, *Pearcy* v. *Stranahan*, 205 U. S. 257 (1907), involved the poltical status of the Isle of Pines. The Dingley Act (Act of July 24, 1897, 30 Stat. 151, c. 11) provided for the imposition of duties *"on articles imported from foreign countries"*. (Italics supplied.) The plaintiff brought suit to recover the value of certain cigars seized by the comptfoller at the port of New York, the cigars having been produced and manufactured in the Isle of Pines. The importer's right to recover depended on whether the Isle of Pines was a

"foreign country" within the Dingley Act. The Supreme Court stated that the Isle of Pines was a small island south of Cuba, which "constituted a municipality within the municipality of the Province of Habana and located in the Judicial district of Bejucal" (205 U. S. 257, 269) and had generally been recognized as part of and subject to the government of Cuba. The court concluded:

> "The Isle of Pines continues at least *de facto* under the jurisdiction of the government of the Republic of Cuba, and that settles the question before us, because as the United States have never taken possession of the Isle of Pines as having been ceded by the treaty of peace, and as it has been and is being governed by the Republic of Cuba, *it has remained 'foreign country' within the meaning of the Dingley Act* according to the ruling in *De Lima* v. *Bidwell*, 182 U. S. 1, and cases cited; *United States* v. *Rice*, 4 Wheat. 246." (Italics supplied.)

It appears, therefore, that there is no uniformity even in the decisions under the Tariff Acts. The term "foreign country" may mean anything from any foreign political subdivision to what is generally spoken of as the British Empire. The construction of the term depends upon the context of the legislation and the purpose sought to be accomplished. The purpose sought to be accomplished by the system of crediting foreign taxes prescribed in section 238 of the 1921 Act plainly was to ameliorate the double taxation of foreign income. There is nothing to prevent this Court from giving full force and effect to that purpose.

3. *Status of New South Wales.*

In Vol. 10, The Laws of England (1909), by the Earl of Halsbury, p. 508, it is stated:

> "Responsible government was conferred upon New South Wales by the Imperial Constitution Act of 1855, which empowered the Sovereign to assent

to the Constitution Act of the colony passed in 1853. Further colonial legislation has since taken place. There is now a Legislative Council of sixty-one members appointed by the Crown for life, unpaid except the President and the Chairman of Committees and the Ministers. The Legislative Assembly consists of ninety members, elected by ballot on one and the same day for three years, unless the assembly is previously dissolved."

In 1900, the Commonwealth of Australia was created and New South Wales was a party to this pact. The Commonwealth of Australia was created by the Constitution Act of 1900 (quoted in part, pp. 35-42, Petitioner's Brief). However, in adopting the Constitution Act of 1900, Parliament did not repeal the Act of 1855 giving New South Wales its status as a self-governing colony or sovereign state. See *Attorney General for Commonwealth of Australia* v. *The Colonial Sugar Refining Co.* (1914) A. C. 237. This decision by the English courts thoroughly explains the nature of the Commonwealth of Australia and shows that New South Wales remained as it was before the federation, a self-governing colony with its sovereign powers under the constitution of 1855, limited only by the powers which were granted to the Commonwealth of Australia. New South Wales is today and was in 1923 a "country" in the legal sense of the word as defined in Dicey's Conflict of Laws, pages 59, 60, *supra*, p. 18.

Even if the Regulation relied upon by the Government is exclusive and only a "foreign sovereign state or self-governing colony" is a "foreign country" within the meaning of such Regulation, New South Wales is not excluded. New South Wales became a self-governing colony in 1855. See 18 and 19 Vict. C. 54; Vol. II, The Laws of England (1909), by the Earl of Halsbury, Vol. 10, p. 519, Note (l). It is pointed out above that this status was not changed by the Constitution Act of 1900,

under which the Commonwealth of Australia was created.

In Bryce, Modern Democracies (1927), Vol. II, p. 177, it is stated:

> "In its practical working from year to year, the Commonwealth is, and each State also continues to be as a State what it was as a colony, a Crowned Republic, *i. e.*, a community monarchical in its form, but republican in its spirit and operation, and indeed more democratic than many republics are. Each community is attached, not only legally, but by what are now the stronger ties of sentiment and reciprocal interest, both to the mother country and to the other British self-governing Dominions."

In Allen, The Evolution of Governments & Laws (revised edition, 1922), at p. 126, under a chapter entitled, "The British Empire," Mr. Allen divides the territories ruled by Great Britain into a number of classes which the first is described as: "Those having representative government with ministers responsible to popular bodies, including Canada, Newfoundland, Queensland, *New South Wales*, Victoria, South Australia, West Australia, Tasmania, New Zealand and Cape Colony."

In Volume I of the Round Table Studies, entitled, "An Analysis of the System of Government Throughout the British Empire," the Commonwealth of Australia is described as "a federation of self-governing colonies." New South Wales is described as a "self-governing colony, a constituent part of the Commonwealth of Australia." It will be noted that this analysis used the exact term contained in Article 382, Regulation 62, "a self-governing colony."

This much will show that when the taxpayer filed its return it had no reason to suspect that the Government would disallow the credit taken for taxes paid to New South Wales. New South Wales was a "foreign sovereign State". It was one of the federation of self-gov-

erning colonies forming the Commonwealth of Australia. The credit was said by the Regulations of the Treasury Department to be allowable.

4. *The Tax in Question Was Levied Pursuant to Power Delegated to New South Wales by the United Kingdom of Great Britain and Ireland.*

The taxes in question were not imposed by New South Wales by reason of a delegation of power to it by the Commonwealth of Australia. They were levied pursuant to a delegation of power from the United Kingdom of Great Britain and Ireland. By the Constitution of 1855, Great Britain gave New South Wales the sovereign power to impose taxes. That Act has not been repealed. See *Attorney General for Commonwealth of Australia* v. *The Colonial Sugar Refining Co.* (1914) A. C. 237.

New South Wales, except to the extent that it delegated certain specific powers to the Commonwealth of Australia, stands in the same position before the Crown as the Commonwealth itself.

The Governor-General of the Commonwealth has no power to veto any act of New South Wales. In this connection, it should be noted that laws passed by Canada, the Commonwealth of Australia, and New South Wales may be disallowed or vetoed by the Crown. Such disallowances (see p. 542, Vol. 10, The Laws of England (1909), by the Earl of Halsbury) may take place,—

> "In the case of laws passed by the Dominion of Canada, within two years of the receipt by the Secretary of State from the Governor-General of a copy of the Act;
>
> * * * * *
>
> In the case of laws passed by the Commonwealth of Australia, within one year from the Governor-General's assent;
>
> In the case of laws passed by New South Wales within two years from the receipt by the
>
> * * *

Secretary of State from the Governor of a copy of the law;"

Since New South Wales is a self-governing colony, its affairs are supervised on behalf of the Crown by the same office which supervises the affairs of other self-governing colonies. If it were only a crown colony as distinguished from a self-governing colony, its affairs would be supervised by the Crown Colonies Department. See 18 C. J. 494. On the other hand, if it were a subdivision of the Commonwealth of Australia, it would have no direct dealings with the Crown. The Governor of New South Wales is appointed by the Crown and not by the Governor-General of the Commonwealth. A Legislative Council of sixty-one members is appointed by the Crown for life and not by the Governor-General of the Commonwealth, the other part of the legislative body being elected by the people. See 18 C. J. 496.

By reason of the fact that New South Wales continues in the same relationship to the Crown as it did prior to the formation of the Commonwealth, to deny the credit for taxes paid to New South Wales is to deny a credit for taxes paid to the Commonwealth, for New South Wales is just as much a self-governing colony as the Commonwealth. The taxes paid to New South Wales must be allowed as a credit either because they are imposed by New South Wales as a sovereignty or because under the rule applied in *Myers* v. *United States,* 140 Fed. 648, they are taxes of the United Kingdom of Great Britain and Ireland.

In *Myers* v. *United States,* the Court was considering a similar contention with respect to a question arising under the tariff laws and said:

"The Dominion of Canada is divided into provinces, among which are Ontario and Quebec. By the British North America Act (Chapter 3, 30-31

> Vict.), the Dominion of Canada has exclusive power to impose export or import duties: But in sections 91 and 92 of that Act we find, in the distribution of powers among the provinces, that it is provided each provincial legislature has the following power of legislation:
>
> (1) Power of direct taxation within the province, in order to the raising of revenue for provincial purposes; * * * I think the province has the power of taxation by way of license in those matters confided to it. If in the exercise of this power lawfully granted, whether by the mother country direct or by it through the Dominion, the province in point of fact and in effect imposes an export duty on pulp wood exported to the United States, it is an imposition of that duty by the Dominion of Canada. * * * It is not done directly by the Kingdom of Great Britain, or directly by the Dominion of Canada, but it is done by legislation authorized by the Dominion."

It is clear that prior to the creation of the Commonwealth, New South Wales was an international person. Its position was changed to some extent by the formation of the federation, but New South Wales still remains an international person. As previously pointed out, it still retains such of its external sovereignty as has not been delegated to the Commonwealth.

It retains such of its treaty-making power as was not transferred to the Commonwealth, making it impossible in certain instances for the Commonwealth to make a treaty without the consent of New South Wales. See Keith, Responsible Government in the Dominions (2nd Edition, 1928), Vol. II, p. 620.

Furthermore, since it is a member-state of a federation or federal union, it is for some part an international person, for in international law any recognition granted the Commonwealth by any foreign state must include a readiness to recognize, on the one hand, the body of the member-states, the Federal State, as one composite in-

ternational person regarding certain matters, and, on the other hand, the single member-states as international persons with regard to other matters. The recognition of the single member-states as international persons goes side by side with the recognition of the Federal State. See 1 Oppenheim International Law (3rd Ed., 1920, p. 160).

For these reasons, we contend that the Board of Tax Appeals was correct in holding that the tax was either an income tax of the British Empire or was levied by New South Wales as a sovereign state, which entitles it to be classified as a foreign country in its own right.

5. *The Regulations of the Treasury Department have adopted a construction of the word "country" and of the term "foreign sovereign state or self-governing colony" which would include New South Wales.*

Article 382, Regulations 62 (Petitioner's Brief, p. 25), states that the term "foreign country" includes within its meaning any "foreign sovereign state or self-governing colony." It is clear that the Treasury Department in drafting Article 382, Regulations 62, did not consider international statehood to be the test. This article of the Regulations expressly states that Hamburg is a "foreign country." Hamburg does not possess international statehood. Its position in the German Republic is much the same as the position of New South Wales. Each is a sovereign state, but neither sit in the family of nations. If Hamburg is a "foreign country," so is New South Wales. The express recognition by the Treasury Department that Hamburg is a "foreign country" precludes any contention on the part of the Government that the international rank of a country has ever been the test in the Regulations of the Treasury Department.

The ruling (S. M. 1614, printed at pp. 31-32 of Petitioner's Brief) which denied the credit to the taxpayer, issued after the taxpayer filed its return, does not make international sovereignty the test. It was made upon the erroneous assumption that New South Wales is a "subdivision" of the Commonwealth of Australia and that it is not a "foreign sovereign State or self-governing colony." The theory that international sovereignty is the test is *new* in this case.

One other ruling relied upon by the Government (Solicitor's Memorandum 1187, printed at pp. 28-30 of Petitioner's Brief) was never published for the information of taxpayers. Even if it had been, it would have favored the taxpayer in this case. This ruling was given upon the basis that Switzerland had ceased to be a system of confederated states and had become one composite State. For this reason, the Government held that the Cantons of Switzerland did not constitute sovereign states. O. D. 1050, referred to by the Government (printed at p. 30, Petitioner's Brief) was likewise issued upon the ground that the Province of British Columbia was not a sovereign State. The differences between the provinces of Canada and New South Wales are clearly pointed out in the case of the *Attorney General for the Commonwealth of Australia* v. *The Colonial Sugar Refining Co., supra,* p. 28, where the court pointed out that the Dominion of Canada is not a federation of colonies. Both rulings indicated that the Treasury Department was attempting to construe the Regulation as excluding all taxes except those paid to a "foreign sovereign state or self-governing colony." However, the phrase "foreign sovereign state or self-governing colony" is one as susceptible of different meanings as the phrase, "foreign country," and the rulings gave no indication that the word "sovereignty" meant interna-

tional sovereignty. There can be no question but that New South Wales is a "sovereign state or self-governing colony" under practically any definition of sovereignty except that applicable only in determining international statehood.

The credit allowed by Section 222 of the Revenue Act of 1921 to individuals for foreign taxes is similar to that allowed corporations by Section 238. One difference, however, is that the credit allowed resident aliens is dependent upon whether the foreign country allows a similar credit to citizens of the United States residing in the foreign country.

Obviously the term "foreign country" in Section 222, which allows the credit to individuals, must have the same meaning as in Section 238, which allows the credit to corporations. The Regulations show that the Treasury Department in construing Section 222 has followed the rule contended for by the respondent rather than the rule making international sovereignty the test. In Article 385 of Regulations 62 (printed in Appendix at p. 45), the Treasury Department has compiled an incomplete list of the "countries" which in its opinion do or do not satisfy the similar credit requirement in Section 222 (a) (3). Except for some changes which are immaterial to our problem, the list is substantially the same in Article 385 of Regulations 45 under the Act of 1918, in Article 385 of Regulations 65 under the Act of 1924, in Article 385 of Regulations 69 under the Act of 1926, and in Article 694 of Regulations 74 under the Act of 1928. Hence it is clear that in administering the provisions of Section 222 (a) (3) the same rule has been followed under the Acts of 1918, 1921, 1924, 1926 and 1928.

In Article 385 of Regulations 62, the Department has listed as "countries" such jurisdictions as Bahama,

Bermuda, Dutch Guinea, India, and Straits Settlements. This conclusively rebuts any presumption that the Government has consistently followed the rule that international statehood is the test in determining what is a "country." These colonies have neither international nor quasi-international sovereignty.

This list of "countries" also shows that the Treasury Department has not followed the rule that a colony must be a self-governing colony in order to be a "country" within the meaning of the credit provisions. India, for example, is now fighting for self-government. "From a strict constitutional point of view, India may be said to rank as a Crown colony." See 18 C. J. 536. Bahama, Bermuda, and Straits Settlements are also Crown colonies as distinguished from self-governing colonies, such as New South Wales and Newfoundland.

If the Government, in determining what constitutes a "country" for purposes of the credit allowed corporations, followed the same rule which it applied in determining what is a "country" for purposes of the credit allowed individuals, it would be compelled to allow the taxpayer a credit for the taxes paid New South Wales. New South Wales comes nearer to having international sovereignty than Bahama, Bermuda or India. Further, if whether the colony is self-governing is the test, then there is all the more reason for classifying New South Wales as a "country," for it has been a self-governing colony for over seventy years while other colonies which the Government has treated as "countries" have not to this date been granted responsible government.

As further evidence of what the Treasury Department has considered to be "countries," we refer to Article 307 of Regulations 45 (printed in Appendix at p. 46). This is a list of some of the "countries" which did or

did not satisfy the similar credit requirement of Section 216(e), Act of 1918. This section of the Act of 1918 allowed a personal exemption to non-resident aliens only if the "country" of which the non-resident alien was a citizen or subject allowed a similar exemption to citizens of the United States residing in such "country." When we look at the "countries" listed in this Article of the Regulations, a number of questions arise. How can the British fortress of Gibralter be treated as a "country" without so treating New South Wales? Are our citizens and corporations to be allowed a credit for taxes paid to the provinces of Austria but none for taxes paid to New South Wales? Are income taxes levied by Gold Coast, Gorlitz, or Mauritius burdens upon our foreign trade while the income taxes of New South Wales are not? Is Weihaiwei, a naval and coaling station leased by Great Britain from China, to be treated as a "country" while New South Wales is not?

The phrase "foreign country" is also used in Section 213 (b)(8) of the Revenue Act of 1921. This section grants a limited exemption to non-resident aliens and foreign corporations of income derived from the operation of ships documented "under the laws of a foreign country." A similar provision is contained in the later Acts, and we have printed in the Appendix (p. 47) a part of Article 89 of Regulations 69 to show the manner in which the Treasury Department has applied the phrase, "foreign country," as used in this section of the Act. In this Article of the Regulations, the Treasury Department has listed as "foreign countries" such countries as Antigua, St. Lucia, St. Vincent, British Honduras, Trinidad, without any qualification that they must be charged with international responsibility prior to being treated as foreign countries.

Again the phrase, "foreign country," is used in Sec-

tion 215(b) of the Revenue Act of 1921 relating to deductions from the net income of an estate or trust. This section provides that:

> "Amounts paid under the laws of any * * * *foreign country* as income to the holder of a life or terminable interest * * * shall not be reduced * * * by any deduction * * * not allowed under the laws of such * * * *foreign country.*"

The Government, in its ruling (Petitioner's Brief, pp. 31-32) has treated the Commonwealth of Australia as a "foreign country." The Commonwealth of Australia has only such powers as are granted it and the colonies have not delegated the power to regulate trusts and estates. On points like those referred to in Section 215(b) we must look to the laws of the colonies. If the term, "foreign country," does not include New South Wales, then the limitation in Section 215(b) does not apply and a taxpayer is allowed a greater deduction in computing his income tax than is actually allowed him in determining the net income of the estate or trust for purposes of administering the estate or trust. However, if as the taxpayer contends, New South Wales is a "foreign country," the taxpayer will be taxed upon his true net income.

Section 256 of the Revenue Act of 1921 provides for information returns, regardless of amounts,

> "in the case of collections of items (not payable in the United States) of interest upon the bonds of *foreign countries* * * *."

We understand that the Treasury Department holds this provision to include bonds issued by all foreign governments, whether or not the government was that of a foreign state or nation entitled to a place in the family of nations. Accordingly, information returns should be made of such interest on bonds issued by New South Wales or City of Berlin, for example, as well as

on bonds issued by the British Government or the Commonwealth of Australia.

It thus appears that the phrase, "foreign country," is used in a number of sections of the Revenue Act of 1921, as well as in other acts. If this phrase be interpreted as meaning any country foreign to the United States, it will fit each of those sections and clearly be in accordance with the congressional intent. The Bureau has adopted and applied this interpretation of the phrase, "foreign country," when used in every other section except those sections giving credit to corporations for foreign income taxes. In fact, the interpretations under the credit sections by the Bureau have not been so limited as is contended for by the Government in this case. There is no logical reason for a different interpretation of the phrase in the different sections.

III.

THERE WAS NO CONSISTENT CONSTRUCTION OF THE TERM "FOREIGN COUNTRY" BY THE BUREAU OF INTERNAL REVENUE.

Prior to the passage of the Revenue Act of 1921, the credit for foreign taxes, such as that involved in this case, was allowed only by the Revenue Act of 1918. See sections 238(a) and 240(c), Revenue Act of 1918. However, beginning with the Corporation Excise Tax of 1909, corporations have been allowed to deduct foreign taxes from their gross income. The particular language of each of these Acts allowing a deduction from gross income is as follows:

Taxes "imposed by the government of *any foreign country* as a condition to carry on business therein."—Section 38 (Second), Corporation Excise Tax of 1909.

Taxes "imposed by the government of *any foreign country.*"—Section G(b), Act of 1913.

Taxes "imposed by the authority of * * * *any foreign country.*" Section 12(a), Act of 1916; Section 1207(1), Act of 1917.

Taxes "paid or accrued within the taxable year imposed * * * by the authority of *any foreign country,* except the amount of income, war profits and excess profits taxes allowed as a credit under section 238." Section 234(a)(3), Act of 1918.

The consistent interpretation of the Bureau of Internal Revenue was to allow the deduction of all taxes imposed by any taxing authority foreign to the United States. All of the regulations dealing with the subject, Regulations 33, interpreting the Revenue Acts of 1913 and 1916, Regulations 33 Revised, interpreting the Revenue Act of 1917, and Regulations 45 under the Revenue Act of 1918, defined "foreign country" specifically as including states, parts or divisions thereof. In Article 8 of Regulations 33 and the same article of Regulations 33 Revised, the interpretation was:

> "Taxes: State or any political subdivision thereof, Federal or foreign * * *."

In Article 382 of Regulations 45 (First Edition. See Par. 3010, pages 384-5, Corporation Trust Company Income Tax Service, 1919 Edition), it is stated:

> "'Foreign country' means any governmental authority, not that of the United States *or any part or possession thereof, having power to impose such taxes,* and it therefore includes a self-governing colony, such as the Dominion of Canada." (Italics supplied.)

Hence it appears that when the Revenue Act of 1918 was adopted and the credit was first allowed for taxes paid to "any foreign country," the Department was interpreting the phrase to include all foreign income taxes.

The purpose for which the credit provision was adopted in the Act of 1918 indicates that Congress intended that the phrase, "foreign country," be used in the same sense that it was used in the Act of 1917 and prior Acts.

In the Report of the Ways and Means Committee reporting the 1918 Revenue Act (*supra,* p. 12), it appears very clearly that it was the intention that the *credit* of income and/or profits taxes paid to foreign countries should be co-extensive with the *deduction* of such taxes theretofore allowed. In other words, the only change was that all income and/or profits taxes imposed by taxing authorities foreign to the United States should be allowed as a credit instead of a deduction. The Senate Finance Committee adopted this report (pp. 19 and 31, Senate Finance Committee Report).

When the Secretary of Treasury published his report in 1919, he included therein the report of the Commissioner of Internal Revenue dated October 15, 1919. At p. 1102 of the Secretary's report, the Commissioner said:

> "New provisions of the Revenue Act of 1918 include * * * credits against the tax for income and excess profits taxes *paid to other taxing authorities.* * * *"

When Regulations 45 were later revised (see Regulations 45, 1920 Edition), the exact definition of the words "foreign country" as contained in the Regulation above quoted, was stricken out and in its place there was inserted the following:

> "'Foreign country' includes within its meaning any foreign state or self-governing colony (for example, the Dominion of Canada) but does not include a foreign municipality (for example, Montreal) unless itself a sovereign State (for example, Hamburg)."

Solicitor's Memorandum 1614 was issued March 24,

1924, and construed Section 238 to include only a very limited class and to exclude New South Wales. The ruling in 1924 denying the credit for taxes paid to New South Wales in addition to being the first warning of the new attitude of the Bureau, has been contested and has never been accepted by taxpayers.

The regulations and rulings construing the term "foreign country," in other sections of the Revenue Acts, including the allowance of credits to individuals, would include any taxing authority foreign to the United States.

Therefore, "the long and consistent administrative construction" claimed by petitioner, did not and does not exist. The construction placed upon a statute by the department charged with its execution is never to be treated as having been adopted by Congress when such construction is not settled and has not received long-continued application by the executive department. In *Iselin* v. *United States,* 270 U. S. 245, 251, Mr. Justice Brandeis said:

> "But the construction was neither uniform, general, nor *long continued;* neither is the statute ambiguous. Such departmental construction cannot be given the force * * * of law."

In *The Dollar Savings Bank* v. *United States,* 86 U. S. 227, 237, this court in denying that the executive construction had been adopted by Congress, said:

> "This, however, can only be when the statute is capable of the construction given to it, and *when that construction has become a settled rule of conduct.*"

See, also, *Missouri Pac. R. Co.* v. *Hellmich,* 12 Fed. (2d) 978; *United States* v. *Rodenbaugh,* 21 Fed. (2d) 781, 785.

At the time of the adoption of the Revenue Act of 1918 and of the Revenue Act of 1921, the Bureau of In-

ternal Revenue was construing the words, "taxes paid to a foreign country," as meaning taxes paid to any taxing authority foreign to the United States. Congress, itself, used the phrases, "Taxes paid to a foreign country," "Taxes imposed by the authority of a foreign country," and "Taxes paid in a foreign country," and "Foreign Taxes," practically interchangeable. (Report Ways and Means Committee, 1918 Act, *supra*, p. 12; adopted by Senate Finance Committee; Report Conference Committee, 1918 Act, p. 60). The opinion of the Solicitor of Internal Revenue given in 1924 limits the words, "foreign country," as used in Section 238, to certain sovereign entities, difficult, if not impossible, to define. The Bureau has continued to construe similar language under Section 222 and other sections to mean all taxes paid to any taxing authority foreign to the United States.

Under such circumstances, it cannot be said that Congress has adopted any construction by the Bureau. If so, which one?

Conclusion.

It is therefore respectfully submitted that the decision of the Circuit Court of Appeals must be sustained.

Respectfully submited,

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APPENDIX.

ARTICLE 385, REGULATIONS 62, PROMULGATED UNDER ACT OF 1921.

ART. 385. COUNTRIES WHICH DO OR DO NOT SATISFY THE SIMILAR CREDIT REQUIREMENTS.—(a) The following is an incomplete list of the countries which satisfy the similar credit requirement of section 222(a)(3) of the Revenue Act of 1921, either by allowing to citizens of the United States residing in such countries a credit for the amount of income, war profits, or excess profits taxes paid to the United States, or in imposing such taxes, by exempting from taxation the incomes reimposing such taxes, by exempting from taxation the incomes received from sources within the United States by citizens of the United States residing in such countries: Bulgaria, Canada, Italy, Newfoundland, Salvador. (b) The following is an incomplete list of the countries which do not satisfy the similar credit requirement of section 222(a)(3) of the Revenue Act of 1921, either by allowing no credit to citizens of the United States residing in such countries, for the amount of income, war profits, or excess profits taxes paid to the United States, or because such countries do not impose any income, war profits, or excess profits taxes: Argentina, Bahama, Belgium, Bermuda, Bolivia, Bosnia, Brazil, Chile, China, Costa Rica, Dutch Guiana, Ecuador, Egypt, Finland, France, Great Britain and Ireland, Guatemala, Herzegovina, India, Jamaica, Japan, Montenegro, Morocco, New Zealand, Nicaragua, Panama, Paraguay, Persia, Peru, Portugal, Rumania, Santo Domingo, Serbia, Siam, Straits Settlements, Sweden, Switzerland, Venezuela. The former names of certain of these territories are here used for convenience in spite of the actual or possible change in the name or sovereignty. A resident of the United States who is a citizen or subject of any country in the first list is entitled, for the purpose of the total tax due the United States for 1921 (as to fiscal years beginning in 1920, see art. 386) and subsequent years, to a credit for the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country. If he is a citizen or subject of any country in the second list, he

is not entitled to such credit. If he is a citizen or subject of a country which is in neither list, then to secure the desired credit he must prove to the satisfaction of the Commissioner that his country satisfies the similar credit requirement of the statute.

ARTICLE 307, REGULATIONS 45, PROMULGATED UNDER ACT OF 1918.

ART. 307. WHEN NONRESIDENT ALIEN INDIVIDUAL ENTITLED TO PERSONAL EXEMPTION.—(a) The following is an incomplete list of countries which either impose no income tax or in imposing an income tax allow both a personal exemption and a credit for dependents which satisfy the similar credit requirement of the statute: Argentina, Bahama, Barbados, Basutoland, Bechuanaland Protectorate, Belgium, Bermuda, Bolivia, Bosnia, Brazil, British Guiana, British Honduras, Bukownia, Bulgaria, Canada, Carniola, Ceylon, Chile, China, Columbia, Cuba, Cyprus, Czechoslovakia, including Bohemia, Moravia, and Slovakia, Dalmatia, Denmark, Ecuador, Egypt, Falkland Islands, Fiji Islands, France, Galicia, Gambia, Germany, Gibraltar, Gold Coast, Goritz, Gradisca, Greece, Grenada, Guatemala, Herzegovina, Hongkong, Istria, Jamaica, Kenya, Luxemburg, Malay States, Malta, Mauritius, Mexico, Montenegro, Montserrat, Morocco, Newfoundland, Nicaragua, Nigeria, Northern Rhodesia, Norway, Nyasaland Protectorate, Panama, Paraguay, Persia, Peru, Porto Rico, Portugal, Roumania, St. Kitt-Nevis, St. Helena, Santo Domingo, Serbia, Siam, Sierra Leone, Silesia, Somaliland Protectorate, Spain, Swaziland, Switzerland, Trieste, Uganda Protectorate, Union of South Africa, Venezuela, Virgin Islands (British), Weihaiwei, Western Pacific Islands, Zanzibar Protectorate. (b) The following is an incomplete list of countries which in imposing an income tax allow a personal exemption which satisfies the similar credit requirement of the statute, but do not allow a credit for dependents: Bachka, Banat of Temesvar, Croatia, Finland, India, Italy, Salvador, Slavonia, Transylvania. (c) The following is an incomplete list of countries which in imposing an income tax do not allow to citizens of the United States not residing in such country either a personal exemption or a credit for dependents and therefore fail entirely to satisfy the similar credit requirements of the statute: Australia, Austria,

including Carinthia, Lower Austria, Salzberg, Styria, Tylor, Upper Austria and Vienna, Costa Rica, Dutch Guiana, Great Britain and Ireland, Japan, the Netherlands, New Zealand, Trinidad, Sweden. The former names of certain of these territories are here used for convenience, in spite of an actual or possible change in name or sovereignty. A nonresident alien individual who is a citizen or subject of any country in the first list is entitled for the purpose of the normal tax to such credit for personal exemption and for dependents as his family status may warrant. If he is a citizen or subject of any country in the second list he is entitled to a credit for personal exemption, but to none for dependents. If he is a citizen or subject of any country in the third list he is not entitled to credit for either personal exemption or for dependents. If he is a citizen or subject of a country which is in none of the lists, then to secure credit for either a personal exemption or for dependents he must prove to the satisfaction of the Commissioner that his country does not impose an income tax or that in imposing an income tax it grants the similar credit required by the statute.

ARTICLE 89, REGULATIONS 69, PROMULGATED UNDER ACT OF 1926.

ART. 89. ADDITIONAL EXCLUSIONS FROM GROSS INCOME.—The following additional exclusions from gross income are allowed by the Revenue Act of 1926:

* * * * *

(a) The following is an incomplete list of the foreign countries which either impose no income tax, or, in imposing such tax, exempt from taxation so much of the income of a citizen of the United States nonresident in such foreign country and of a corporation organized in the United States as consists of earnings derived from the operation of a ship or ships documented under the laws of the United States: Argentine Republic, Bulgaria, Denmark, Egypt, Germany, Great Britain and Northern Ireland, Iceland, Italy, Japan (from July 18, 1924, only, the date on which the Japanese law granting exemption to American citizens and American corporations was promulgated), Norway, Paraguay, Persia, St. Lucia, Siam, Straits Settlements, Sweden, and Venezuela. The exemption accorded to Great Britain and Northern Ire-

land does not extend to the Irish Free State but is limited to residents of Great Britain and Northern Ireland, other than citizens of the United States, and to corporations organized under and existing by virtue of the laws of the United Kingdom. (b) The following is an incomplete list of the foreign countries which, in imposing an income tax upon the income of citizens of the United States nonresident in such countries or of corporations organized in the United States, do not exempt from taxation the earnings derived from the operation of a ship or ships documented under the laws of the United States: Antigua, Belgium, British Honduras, Costa Rica, Dominica, Fiji, Finland, France, Greece, Grenada, India, Jamaica, The Netherlands New Zealand, Peru, St. Vincent, Spain, Trinidad, and Union of South Africa.

So much of the income from sources within the United States of a nonresident alien individual or of a foreign corporation as consists of earnings derived from that operation of a ship or ships documented under the laws of any of the countries in the first list is not required to be included in the gross income of such nonresident alien individual or foreign corporation for the purpose of Federal income tax. The income from sources within the United States of a nonresident alien individual or of a foreign corporation which consists of earnings derived from the operation of a ship or ships documented under the laws of any of the countries in the second list is required to be included in the gross income of such nonresident alien individual or foreign corporation and is subject to Federal income tax. If a nonresident alien individual or a foreign corporation receives income from sources within the United States consisting of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which is in neither list, the amount so received must be included in gross income unless satisfactory proof is furnished either (a) that such foreign country imposes no income tax, or (b) if an income tax is imposed that the foreign statute grants an equivalent exemption to citizens of the United States nonresident in such country and to corporations organized in the United States;

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SUPREME COURT OF THE UNITED STATES.

No. 378.—October Term, 1931.

David Burnet, Commissioner of Internal Revenue, Petitioner, *vs.* Chicago Portrait Company. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 23, 1932.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

This proceeding was brought for the redetermination of a deficiency in income tax for the year 1923. The respondent, Chicago Portrait Company, is an Illinois corporation with its principal place of business at Chicago. It owned 51 per cent. of the capital stock of the International Art Company of Sydney, Australia, a foreign corporation. Respondent received dividends from the International Art Company and sought credit for a proportionate part of the income taxes paid by that corporation to the Commonwealth of Australia, to the State of New South Wales, and to the Dominion of New Zealand. Section 238 (e) of the Revenue Act of 1921 (42 Stat. 227, 258, 259) permitted credit in the case of such taxes paid "to any foreign country." Credit was allowed on account of the income taxes paid to the Commonwealth of Australia and to the Dominion of New Zealand but was refused as to those paid to the State of New South Wales. The Board of Tax Appeals held that the respondent was entitled to the credit with respect to the last mentioned taxes also, and the Circuit Court of Appeals affirmed that decision. 16 B. T. A. 1129; 50 Fed. (2d) 683. This Court granted a writ of certiorari.

The sole question is whether New South Wales is a "foreign country" within the meaning of the applicable statute.[1]

[1]The provisions of Section 238 (a) and (e) of the Revenue Act of 1921 are as follows:

"Sec. 238 (a) That in the case of a domestic corporation the tax imposed by this title, plus the war-profits and excess-profits taxes, if any, shall be

The word "country", in the expression "foreign country", is ambiguous. It may be taken to mean foreign territory or a foreign government. In the sense of territory, it may embrace all the territory subject to a foreign sovereign power. When referring more particularly to a foreign government, it may describe a foreign State in the international sense, that is, one that has the status of an international person with the rights and responsibilities under international law of a member of the family of nations[2]; or it may mean a foreign government which has authority over a particular area or subject-matter, although not an international person but only a component part, or a political subdivision, of the larger international unit.[3] The term "foreign country"

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credited with the amount of any income, war-profits, and excess-profits taxes paid during the same taxable year to any foreign country, or to any possession of the United States: *Provided*, That the amount of credit taken under this subdivision shall in no case exceed the same proportion of the taxes, against which such credit is taken, which the taxpayer's net income (computed without deduction for any income, war-profits, and excess-profits taxes imposed by any foreign country or possession of the United States) from sources without the United States bears to its entire net income (computed without such deduction) for the same taxable year. . . .

"(e) For the purposes of this section a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends (not deductible under section 234) in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid by such foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits: *Provided*, That the credit allowed to any domestic corporation under this subdivision shall in no case exceed the same proportion of the taxes against which it is credited, which the amount of such dividends bears to the amount of the entire net income of the domestic corporation in which such dividends are included. The term 'accumulated profits' when used in this subdivision in reference to a foreign corporation, means the amount of its gains, profits, or income in excess of the income, war-profits, and excess-profits taxes imposed upon or with respect to such profits or income; . . . ."

[2]Oppenheim, International Law, 4th ed., vol. I, secs. 63, 64, pp. 133-135; Hyde, International Law, vol. 1, secs. 6-8, pp. 15-18; Moore's International Law Digest, vol. I, pp. 14-18.

[3]See Dicey, Conflict of Laws, 4th ed., pp. 59, 60.

is not a technical or artificial one, and the sense in which it is used in a statute must be determined by reference to the purpose of the particular legislation.[4]

In the case of tariff acts, this Court said in *Stairs* v. *Peaslee*, 18 How. 521, 526, that the word 'country' has always been construed "to embrace all the possessions of a foreign State, however widely separated, which are subject to the same supreme executive and legislative control." See, also, *United States* v. *The Ship Recorder*, 1 Blatchf. 218, 225-227; *Campbell* v. *Barney*, 5 Blatchf. 221. Accordingly, in construing the Act of March 3, 1851 (9 Stat. 629, 630) providing that imported merchandise should be appraised at its market value "at the principal markets of the country" from which it had been imported, the Court held that a commodity shipped from Halifax, Nova Scotia, should be appraised according to the value in the principal markets under the British rule, and these were found, in fact, to be London and Liverpool. After the ratification of the Treaty of Peace between the United States and Spain, Porto Rico and the Philippines ceased to be "foreign country" under the tariff laws. *De Lima* v. *Bidwell*, 182 U. S. 1; *Fourteen Diamond Rings* v. *United States*, 183 U. S. 176, 179. It followed that the term "other countries" in the Commercial Convention with Cuba of 1903 (33 Stat. 2136, 2140) did not include the Philippine Islands. *Faber* v. *United States*, 221 U. S. 649, 658. Under the provisions of the Platt Amendment and the Constitution of Cuba, the Isle of Pines was *de facto* under the jurisdiction of Cuba and hence remained "foreign country" within the meaning of the Tariff Act of 1897 (30 Stat. 151). *Pearcy* v. *Stranahan*, 205 U. S. 257, 265.

In construing legislation providing for the deportation of aliens "to the country whence they came", the place of emigration affords the dominant consideration. Thus, under the Immigration Act of 1917 (39 Stat. 874, 890) the Court held that an alien emigrating from Grodno, then a part of Russia, was properly deported to Poland, because at that time Grodno was a part of Poland. "The

[4] Wayman v. Southard, 10 Wheat. 1, 29; Marriott v. Brune, 9 How. 619, 635, 636; American Tobacco Co. v. Werckmeister, 207 U. S. 284, 293; United States v. Louisville & Nashville R. R. Co., 236 U. S. 318, 333; Inter-Island Steam Navigation Co. v. Ward, 242 U. S. 1, 4; Porto Rico Railway, Light & Power Co. v. Mor, 253 U. S. 345, 348.

term country," said the Court, was used in the statute "to designate, in general terms, the state which, at the time of deportation, includes the place from which the alien came." *Mensevich* v. *Tod*, 264 U. S. 134, 136, 137. The evident purpose of the statute determined the significance to be attached to the expression.

In the instant case, the question is one of credit for income taxes "paid to any foreign country." The word "country" is manifestly used in the sense of government. And to decide what government fits the description, whether only that of a foreign power which may be considered an international person, or that of a political entity which, although not an international person, levies and collects income taxes which may be the subject of the intended credit, it is necessary to consider the object of the enactment and to construe the expression "foreign country" so as to achieve, and not defeat, its aim. We think that the purpose of the statute is clear. The fact that the provision is for a credit to the domestic corporation, against income taxes payable here, of income taxes "paid during the same taxable year to any foreign country," itself demonstrates that the primary design of the provision was to mitigate the evil of double taxation. Cognate provisions in the case of individuals disclose a similar intent. Section 222 (a)[5] of the same Revenue Act (1921) provides that the income tax, in the case of a citizen of the United States, should be credited with the amount of any income taxes "paid during the taxable year to any foreign country or to any possession of the United States." In the case of an alien resident of the United States, the credit is conditioned upon reciprocal treatment. The resident alien is to be credited with "the amount of any such taxes

[5] "Sec. 222. (a) That the tax computed under Part II of this title shall be credited with:

"(1) In the case of a citizen of the United States, the amount of any income, war-profits and excess-profits taxes paid during the taxable year to any foreign country or to any possession of the United States; and

"(2) In the case of a resident of the United States, the amount of any such taxes paid during the taxable year to any possession of the United States; and

"(3) In the case of an alien resident of the United States, the amount of any such taxes paid during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; . . ."

paid during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country." 42 Stat. 249.[6]

In the case of domestic corporations, the purpose is also disclosed to facilitate their foreign enterprises. The provision of Section 238 (e) of the Revenue Act of 1921 indicates appreciation of the practical exigencies which lead to the foreign incorporation of subsidiaries for the extension by domestic corporations of their business abroad. This clearly appears to be the reason for the allowance by that Act of a credit to a domestic corporation, against

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[6]With respect to the allowance of such credits, as distinguished from deductions from gross income in computing net income, the Committee on Ways and Means of the House of Representatives in its report on the Revenue Bill of 1918 (H. R. Rep. No. 767, 65th Cong., 2d sess., p. 11), said: "Under existing law a citizen of the United States can only deduct income war or excess profits taxes paid to a foreign country from gross income in computing net income. With the corresponding high rates imposed by certain foreign countries the taxes levied in such countries in addition to the taxes levied in the United States upon citizens of the United States place a very severe burden upon such citizens. The bill provides that a credit against the income tax imposed in the United States be allowed a citizen of the United States subject to income and war or excess profits taxes in a foreign country of an amount equal to the tax paid in such country upon income that is received from sources within such country. The bill further provides that, in the case of an alien resident of the United States who is a citizen or subject of a country which imposes income, war profits, or excess profits taxes, a like credit shall be allowed if such country allows a similar credit to citizens of the United States resident in such country."

The Conference Report on the Revenue Bill of 1918 (H. R. Rep. No. 1037, 65th Cong., 3d sess., p. 53), contains the following statement: "Amendment No. 118: The House bill provided that a citizen of the United States might credit against his income tax the amount of any income, war-profits, and excess-profits taxes paid to any foreign country, Porto Rico, or the Philippine Islands, upon income derived from sources therein, and allowed a similar credit to an alien resident if his country makes reciprocal provisions. The Senate amendment entirely rewrites the section and broadens it to include a credit for taxes paid to any possession of the United States, which is also [illegible]e given to an alien resident of the United States. The House recedes [illegible]n amendment providing that if any deduction is allowed for taxes [illegible]l in any possession or foreign country, the commissioner may require the taxpayer to give a surety bond providing for the payment of any tax found to be due the Government in case too great a deduction shall be allowed for accrued taxes in our possessions or any foreign country. . . ."